IN THE HIGH COURT OF JUDICATURE AT BOBBY
APPELLATE CIVIL JURISDICTION

LETTERS PATENT APPEAL NO.167 OF 2000

Uco Bank, Zonal Office,)
Mafatlal Centre)
2nd Floor, Nariman Point)
Mumbai-400 021.)..APPELLANT

Versus

1.Shri S.Venkata Chari)
C/o.Smt.Sulochana)
Venkataram, Sounitra)
Building,Govandi Road,)
Chembur,Mumbai.)
2.Shri S.B. Panse,)
Presiding Officer,)
Central Government)
Industrial Tribunal)
No.2, Sharma Raksha)
Bhuvan,Opp.Priyadarshini)
Building,Shiva Shrusti)
Road, Sion Trombay Road)
Chunabhatti, Mumbai)..RESPONDENTS

Mr. V.P.Vaidya, for the Appellant.
Mr. Uday Warunjikar, for Respondent No.1.

CORAM: F.I.REBELLO & ANOOP V. MOHTA, JJ.
DATE: 19th August, 2004.

ORAL JUDGMENT (PER F.I. REBELLO, J.)

1. A charge sheet was issued to the respondent No.1 on 12th September, 1990. It was alleged that the appellant while working on one of the payment counters at Sitabuldi Branch left the cash counter at about 1.30 p.m. on 16th August, 1989 without permission of higher authorities and has asked Mrs. A.A. Deshpande to work on the said counter. On the same day it was found that there was a shortage of Rs.36,150/- in cash. The shortage was made good on 17th August, 1989 reportedly by friends and a brother of the Respondent. Various other instances in respect of past incidents were set out. The Respondent No.1 was informed by letter that an

enquiry would be held and the names of the enquiry officer and the presenting Officer were communicated to the respondent No.1.

. The respondent workman by his letter dated 17th October, 1990 addressed to the Enquiry Officer with reference to the charges served upon him wrote as under:-

> "The charges levelled by you are all accepted to enable you to dispense with the need for setting up a Court of enquiry, thus saving you the ordeal of going through the rigmarole of this unpleasant and tardy affair."

The respondent No.1 then further set out, that conducting the enquiry be dispensed with and left it to the authority to take whatever action be needed to be taken and impose punishment they may be deemed fit. In the said letter the workman set out some circumstances which the disciplinary authority in his opinion ought to consider while passing the order of punishment. A subsequent letter was also addressed to the Disciplinary Authority wherein once again the respondent pleaded guilty to the charges levelled, expressed his regret and assured of good behaviour in the future.

It was set out in the letter as under:-

> "I request you to kindly treat my case under clause 19, 12(e) of the Bipartite Settlement of 19.10.1956 and give me any

punishment short of discharge or dismissal, which I am prepared to accept.

I do not require any hearing about the nature of punishment which the management may like to impose upon me.

I write this letter voluntarily to avail my self of the benefit under Clause 19, 12(e) of the Bipartite Settlement."

2. The Disciplinary Authority thereafter by his order of 6th July, 1991 considering the admission of guilt by the appellant and considering the findings and taking into consideration the past record and behaviour in the bank and outside the bank recorded as under:-

1. That you were given number of chances to improve your conduct and behaviour. A public notice was given on 16.2.1985 (in the newspaper) for your unwarranted absence in the Bank and advising you to report forthwith.

2. That, we have received number of complaints from our customers complaining of non-refund of hand loans etc. taken by you from time to time.

3. The shortage of cash found during the course of working on may occasions which remained unadjusted immediately.

4. That, you are involved in availment of loan against Fixed Deposit by misrepresenting the Depositor. The Depositor will be filing Civil Suit against you and Bank is also one of the Defendant."

The Disciplinary Authority then observed that the Disciplinary Authority was not in a position to accede to the request of the respondent to treat the case under clause 19, 12(e) of the Bipartite Settlement of 1966 and by virtue of the powers vested in him imposed the punishment of dismissal without notice.

3. Aggrieved by the above order the respondent initiated proceedings in Conciliation pursuant to which a reference was made to the Central Government Industrial Tribunal. The learned Tribunal vide Award Part I dated 31st October, 1996 was pleased to hold that the enquiry held against the workman was not against the principles of natural justice and consequently rejected that contention. Thereafter by the impugned award dated 31st October, 1996 was, however, pleased to direct the reinstatement of the respondent in service with continuity, but without back wages and other benefits. In passing the said award the learned Tribunal proceeded to hold that the confessional statement given by the workman is at the suggestion of the authorities and not voluntary and held that it was on the suggestion of the authorities.

Dealing with the payment of Rs.36,150/- the learned Tribunal found that though it was later made good further held that the charge had to be established that on 16th August, 1989 when the respondent was working there was cash shortage. Thereafter in paragraph 9 the learned Tribunal observed that considering Clause 19(12)(e)(i) the Enquiry Officer also thought fit not to proceed with further enquiry and to record the statement of witness and other formalities and giving detailed report and findings on charges against the workman. The Enquiry Officer has merely submitted the proceedings and letter of 12th December, 1989 signed by the workman admitting guilt. It was held by the learned Tribunal that this action of the enquiry officer supports the case of the respondent that he was assured of a lesser punishment than that of dismissal. In the same breath the learned Tribunal proceeded to hold that the charges which are levelled against the workman namely Charge Nos. 2 and 3 cannot be said to be minor charges. The learned Tribunal held that once an assurance was given it had to be implemented and considering that

passed the impugned award.

4. The appellants challenged the award by filing a petition before this Court. Writ Petition No.1478 of 1999 is the petition filed by the appellant bank. Petition was also filed by the respondent being Writ Petition No.2079 of 1999 in the matter of denial of back wages. The learned Single Judge disposed of both the petition by order dated 30th August, 1999. The learned Single Judge held that

the learned Presiding Officer considering the evidence on record had come to the conclusion that an assurance was given to the employee that he would not be dismissed or discharged if he admits the guilt and considering that, set aside the order of dismissal dated 6th July, 1991. The learned Single Judge held that the punishment imposed could not be said to be insufficient and, therefore, called for no interference.

5. The appellant bank has challenged the said order by the present Letters Patent Appeal. At the hearing of this Appeal on behalf of the appellant bank it is contended that there was no material produced by the respondent either before the enquiry officer or before the Reference Court to hold that any assurance was given to the respondent that lesser punishment would be imposed than that of dismissal. It is, therefore, submitted that the finding of the Industrial Tribunal is totally perverse being based on no material. The learned Single Judge did not address himself to that aspect of the matter. It is then submitted, that the reliance placed on clause 19(12)(e)(i) of the Bipartite Settlement was misplaced. The said clause reads as under:-

> "An inquiry need not be held if the misconduct is such that even if proved the bank does not intend to award a punishment of discharge or a dismissal."

It is, therefore, submitted that even if the

workmen had placed reliance on Clause 19(12)(e)(i) that would be of no avail as that clause will apply only in a case where the bank felt that there is no need to award punishment of discharge or dismissal in which case an enquiry could be dispensed with. In the instant case in fact the bank had served a charge sheet on the respondent and proceeded to appoint an enquiry officer and presenting officer and commenced the enquiry. In these circumstances clause 19(12)(e)(i) was not attracted. It is pointed out that the purpose of such a clause are in cases where the charge alleged is a minor misconduct, and the employer is discharged from holding an elaborate enquiry.

. On the other hand on behalf of the respondent No.1 his learned Counsel submits that the appellant bank has been unable to substantiate their claim that money was missing on that day in a sum of Rs.38,000/- and odd. It is further submitted that in so far as the charge sheet is concerned some of the charges listed in the earlier proceedings have already been initiated and warnings had been issued and in these circumstances they could not have formed the basis of another enquiry against the workman. Lastly it is submitted that considering the age and other facts this Court ought not to interfere with the orders passed by the Courts below.

5. At the outset it may be mentioned that the post held by the respondent workman in the bank was that of a Cashier. In other words a vital post in so

far as a banking industry is concerned. It is in that context that the Award and also the judgment of the learned Single Judge will have to be considered. The finding by the Industrial Tribunal that the letter admitting guilt was based on a promise by the officers of the bank, in our opinion, is totally perverse. To record such a finding there ought to have been material before the learned Tribunal. The learned Tribunal had recorded a finding that the enquiry conducted was not contrary to the principles of natural justice and fair play. The only other aspect thereafter was to consider whether the findings recorded are perverse. The findings in this case are based on the admissions by the respondent workman admitting the misconduct in respect of which he was charged. The incident of shortage is of 16th August, 1989. That shortage was made good on the very next day i.e. on 18th August, 1989 by well wishers and brother of the respondent. The workman thereafter by his representation of 12th December, 1990 admitted his guilt. It was nowhere stated in the said letter that he was given any assurance by any officer that punishment other than dismissal or discharge would be imposed. At any rate the officer mentioned in the statement filed before the Industrial Tribunal who was supposed to have given the assurance was not examined. It is, therefore, surprising as to how the Industrial Tribunal came to record a finding that there was a promise or assurance by officers of the appellant bank to the respondent based on which the letter dated 12th

December, 1990 was given by the workman pleading guilty. That finding is totally perverse based on no evidence and must, therefore, be set aside.

7. The second issue is whether there is anything in Clause 19(12)(e)(i) which would be of any assistance to the workman and whether the Disciplinary Authority was bound to consider Clause 19(12)(e)(i) imposing punishment considering. No doubt the Disciplinary Authority in the order imposing punishment has set out that considering the facts set out and disclosed the Respondent workman was not entitled to the benefit of the aforesaid clause. The question really is not whether the Disciplinary Authority could have relied upon the clause. The question is whether that clause confers any jurisdiction on the Disciplinary Authority to impose lesser punishment than dismissal. We have earlier reproduced the clause. On a plain reading of the said clause and on its true construction, what it means is that in case of a misconduct where the employer/bank herein does not intend to award punishment of discharge or dismissal then an enquiry can be dispensed with. These are normal clauses which are found in Standing Orders and/or in Service Rules. The clause, therefore, could be of no assistance to the respondent workman as in the instant case the bank had decided to hold an enquiry in respect of the charges levelled against the workman.

8. Having so held the question is whether as

contended on behalf of the respondent workman we should not interfere with the punishment of dismissal. As noted earlier the respondent was working as a Cashier. One of the misconducts alleged was shortage of cash on 16th August, 1989. That charge was proved. The Disciplinary Authority apart from considering the gravity of that misconduct has considered the past service record of the workman. As many as four instances have been cited in so far as his past record is concerned including staying away from work for which public notice had to be issued. All other instances are of either cash shortage or complaint of the customers that the respondent was taking hand loan and not returning them and/or misrepresenting the facts to the customers. Apart from that the charge which the workman was charged being grave and the post was that of a cashier. We find that considering the gravity of misconduct and the the past record of the respondent the Disciplinary Authority was right in imposing punishment of dismissal without notice.

9. Considering the above the Award of the Industrial Tribunal dated 31st October, 1996 and the order of the learned single Judge dated 30th August, 1999 are set aside. The reference is rejected. Appeal allowed accordingly. There shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

CIVIL APPLICATION NO.70 OF 2003

IN

LETTERS PATENT APPEAL STAMP NO.68457 OF 2003

Shri S.Venkata Chari,)..APPLICANT

Versus

1. UCO Bank through its Zonal Office

& Anr.)..Respondents

Mr. Uday Warunjikar, for the Applicant.

Mr. V.P. Vaidya, for the Respondents.

CORAM: F.I.REBELLO & ANOOP V. MOHTA, JJ.

DATE: 19th August, 2004.

P.C.

Considering the cause shown delay condoned. Office to

Register the Letters Patent Appeal.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

LETTERS PATENT APPEAL STAMP NO.68457 OF 2003

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Mr. V.P. Vaidya, for the Respondents.

CORAM: F.I.REBELLO & ANOOP V. MOHTA, JJ.

DATE: 19th August, 2004.

P.C.

Considering the reasons given by us while disposing of

Letters Patent Appeal No.167 of 2000 nothing survives in this

Letters Patent Appeal, which is accordingly dismissed.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)